

EXHIBIT D



August 19, 2024

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900
GILDFOIAAppeals@ice.dhs.gov

Submitted VIA EMAIL

RE: ICE FOIA 2024-IFCO-50888: FOIA APPEAL

Dear Office of the Principal Legal Advisor:

I write regarding our Freedom of Information Act (“FOIA”) request, sent and received on August 9, 2024, and assigned number **ICE FOIA 2024-IFCO-50888**, which requested:

- 1) All documents submitted in response to a Request for Information (“RFI”) titled “Multi-State Detention Facility Support - Request for Information,” with Notice ID “2024ICEMULTISTATE,” originally issued by U.S. Immigration and Customs Enforcement (“ICE”) on May 30, 2024, to “identify possible detention facilities” in areas covered by the Chicago, Harlingen, and Salt Lake City Enforcement and Removal Operations (“ERO”) Field Offices. *See* Exhibit A, Sam.gov, Multi-State Detention Facility Support-Request for Information.¹
- 2) All documents submitted in response to a Contract Solicitation titled “Contract Detention Facility Solicitation No. 70CDCR24R00000012 – ERO Newark, New Jersey Area of Responsibility,” originally published on June 26, 2024, and updated on July 11, 2024. *See* Exhibit B, Sam.gov, Contract Detention Facility Solicitation No. 70CDCR24R00000012 – ERO Newark, New Jersey Area of Responsibility.²

The ACLU’s FOIA request also included a request for a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d).

¹ Sam.gov, Multi-State Detention Facility Support—Request for Information, <https://sam.gov/opp/ca0a3904f27d49039f75509932de0d3b/view> [https://perma.cc/P27U-Z3VE] (Jul. 8, 2024), and attachment, Multi-State Detention Facility Support-Request for Information.pdf.

² Sam.gov, Contract Detention Facility Solicitation No. 70CDCR24R00000012 – ERO Newark, New Jersey Area of Responsibility, <https://sam.gov/opp/5cf4af3e829a465b83efaa9942a765a3/view> [https://perma.cc/7P3K-HTWB] (Aug. 2, 2024).



On August 14, 2024, the ICE FOIA Office responded, confirming receipt of the request. The response did not explicitly respond to the ACLU's request for a fee waiver, nor did it state whether the fee waiver request had been reviewed, approved, or denied. The response, however, stated that "[i]f you deem the decision to deny expedited treatment and fee waiver for your request an adverse determination, you have the right to appeal." *See* Email from ICE FOIA Office, August 14, 2024. To the extent that the request for a fee waiver was also denied, the ACLU appeals that decision pursuant to 5 U.S.C. § 552(a)(6); if the fee waiver request was not denied, the ACLU objects to a charge for search and duplication of these records, and requests a review and determination of the fee waiver request.

The response denied the ACLU's request for expedited processing. *See* Email from ICE FOIA Office, August 14, 2024. The ACLU also appeals the denial of the expedited processing request. 5 U.S.C. § 552(a)(6).

A copy of the ICE FOIA Office's August 14, 2024 letter is attached.

A. REQUEST FOR FEE WAIVER

As discussed in detail in the ACLU's FOIA Request, disclosure of the requested records is in the public interest and "likely to contribute significantly to public understanding of the operations or activities of the government," and "not primarily in the commercial interests of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

Disclosure of the information sought in the Request will contribute significantly to the public's understanding of ICE's plans to expand immigration detention in new facilities nationwide. ICE's plans to expand and establish new immigration detention facilities through the RFI and solicitation notices have prompted active concern and attention from Congress, the media, and advocates. Members of Congress have written multiple letters to the Department of Homeland Security raising concern about this potential expansion of immigration detention, and urging DHS and ICE to reject contracts with for-profit prison corporations. For example, on June 6, 2024, Senator Cory Booker wrote to DHS and ICE urging the agency to reconsider plans to open a new, privately-operated immigration detention center in New Jersey.³ Eight Congressional representatives from New Jersey have also written to the Department of Justice to refrain from supporting a private prison company's potential operation of immigration detention

³ Letter from Sen. Cory Booker to DHS Secretary Alejandro Mayorkas, Jun. 6, 2024, <https://www.booker.senate.gov/imo/media/doc/6624cblettericedetentionnewark1.pdf> [https://perma.cc/22AA-7V2R].



facilities in the state.⁴ Ten other senators wrote to DHS and ICE on May 14, 2024, urging the agency to recommit to phasing out ICE's use of private, for-profit detention facilities.⁵

Detention of noncitizens, and ICE's decision to expand or end detention contracts, is a matter of significant government activity and public interest.⁶ Multiple national news outlets have covered ICE's recent plans "for an expansion of ICE's . . . detention capabilities,"⁷ to "increase overall detention capacity" and "expand detention bed space,"⁸ and to "pay for more detention space following President Biden's executive action on the border."⁹ Local media outlets have similarly covered these potential plans to expand immigration detention in areas identified by the RFI and solicitation notices.¹⁰ Advocates have likewise raised concern with ICE's efforts to

⁴ Letter from Rep. Bonnie Watson Coleman et al., to Attorney General Merrick Garland, Jun. 6, 2024, https://newjerseymonitor.com/wp-content/uploads/2024/06/doj_letter_to_ag_garland_6-6-24.pdf [https://perma.cc/2CSD-HCK7]; Sophie Nieto-Munoz, *New Jersey's D.C. Democrats Say Biden Administration Should Not Support Immigrant Jail*, New Jersey Monitor, Jun. 10, 2024, <https://newjerseymonitor.com/2024/06/10/new-jerseys-d-c-democrats-say-biden-administration-should-not-support-new-immigrant-jail/>.

⁵ Letter from Sen. Elizabeth Warren, et al., to DHS Secretary Alejandro Mayorkas, May 14, 2024, https://www.warren.senate.gov/imo/media/doc/final_-_letter_to_dhs_and_ice_on_private_detention_center_use_05142024.pdf [https://perma.cc/EJ5T-HC4L].

⁶ See, e.g. Ted Hesson, Mica Rosenberg, and Kristina Cooke, *Biden Vowed to Reform Immigration Detention. Instead, Private Prisons Benefited*, Reuters, Aug. 7, 2023, <https://www.reuters.com/world/us/biden-vowed-reform-immigration-detention-instead-private-prisons-benefited-2023-08-07/>; Jose Olivares, *Investigators Wanted to Close an Abusive ICE Facility. Biden's Administration Extended Its Contract*, The Appeal, Jul. 25, 2024, <https://theappeal.org/biden-admin-extended-contract-abusive-ice-detention-center/>; Austin Fisher, *Torrance County Commission Votes to Extend ICE Contract*, Source New Mexico, Apr. 25, 2024, <https://sourcenm.com/2024/04/25/torrance-county-commission-votes-to-extend-ice-contract/>; Allison Kite, *Shuttered Private Jail in Leavenworth Could Become ICE Detention Center*, Kansas Reflector, Sept. 6, 2023, <https://kansasreflector.com/2023/09/06/shuttered-private-jail-in-leavenworth-could-become-ice-detention-center/>; Jose Abonce, *ICE Detains Illinois Immigrants in Out-of-State Jails*, South Side Weekly, Dec. 6, 2023, <https://southsideweekly.com/ice-detains-chicago-immigrants-in-wisconsin-despite-illinois-way-forward-act/>.

⁷ Rafael Bernal, *Biden Administration's Immigrant Detention Moves Highlight Strained System*, The Hill, Jun. 15, 2024, <https://thehill.com/homenews/administration/4723342-biden-administration-immigrant-detention-moves-highlight-strained-system/>.

⁸ Ted Hesson, *U.S. To Close Costly Texas Immigration Detention Center and Reroute Funds*, Reuters, Jun. 10, 2024, <https://www.reuters.com/world/us/us-close-costly-texas-immigration-detention-center-reroute-funds-2024-06-10/>.

⁹ Michelle Hackman, *Biden to Close 'Dilley' Detention Center, Shift Resources Amid Border Crackdown*, Wall St. Journal, Jun. 10, 2024, <https://www.wsj.com/politics/policy/biden-to-close-dilley-detention-center-shift-resources-amid-border-crack-down-2b2cfc5>.

¹⁰ See, e.g. Tim Vandernack, *U.S. immigration Officials Seek Info on Possible Detention Center for Utah; Ogden Site Proposed*, KSL.com, Jul. 10, 2024, <https://www.ksl.com/article/51064305/us-immigration-officials-seek-info-on-possible-detention-center-for-utah-ogden-site-proposed>; Sophie Nieto-Munoz, *Immigrant Advocates Alarmed by Prospect of New Immigrant Jail in Newark*, New Jersey Monitor, Jun. 17, 2024, <https://newjerseymonitor.com/2024/06/17/immigrant-advocates-alarmed-by-prospect-of-new-immigrant-jail-in-newark/>.



expand detention: on July 11, 2024, over 200 immigrant rights organizations sent a letter to DHS urging the administration to halt ICE’s detention expansion efforts.¹¹

ICE routinely grants the ACLU fee waivers in its FOIA requests, including those related to immigration detention. ICE has not indicated any reason as to why this request should be any different. *See, e.g.* ICE FOIA Case No. 2020-ICFO-16550, Jan. 9, 2020 (granting fee waiver to ACLU for FOIA request to ICE regarding detention contracts); ICE FOIA Case No. 2020-HQFO-01166, May 26, 2020 (granting fee waiver to ACLU for FOIA request regarding COVID-19 conditions in ICE detention); ICE FOIA Case No. 201-ICFO-14841, Jan. 11, 2018 (granting fee waiver to ACLU for FOIA request regarding segregation review management system in ICE detention); *see also. Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282, 287 (D. Conn. 2012) (“organizations like the ACLU are regularly granted news representative status” for FOIA fee waivers); *Am. C.L. Union of Washington v. U.S. Dep't of Just.*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (similar). The ACLU has no commercial interest that would be furthered by the requested information.

For these reasons, the ACLU respectfully requests a fee waiver.

B. REQUEST FOR EXPEDITED PROCESSING

The ACLU also appeals the agency’s denial of its request for expedited processing. There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii). The ACLU is an organization primarily engaged in disseminating information to the public regarding Federal Government activity. *See Supra* Section A; ACLU’s FOIA Request.

Specifically, the requested records pertain to ICE’s active plans to expand immigration detention facilities in ICE’s Chicago, Salt Lake City, Harlingen, and Newark areas of responsibility. As described above, these records have raised great and urgent interest among members of Congress, the media, and advocates. The requested information is urgently needed, given the need to inform the public about the federal government’s plans for new immigration detention facilities in areas where none currently exist. As National Public Radio recently

¹¹ Letter from 211 Immigrant Rights Organizations to DHS Sec. Mayorkas, *Pattern of Deteriorating Immigration Detention Conditions Amid Expansion Efforts*, Jul. 11, 2024, <https://www.detentionwatchnetwork.org/sites/default/files/NGO%20Letter%20regarding%20ICE%20Detention%20-%20July%202024.pdf> [https://perma.cc/MM6M-VPW3].



reported, the availability of immigration detention capacity will be a critical factor in a potential Trump administration's ability to carry out former President Trump's pledge to launch "the largest deportation operation in the history of our country."¹² The report noted that, "[t]o accomplish the mass removal of unauthorized migrants, federal agencies like ICE and the Department of Homeland Security would need more infrastructure," such as immigration detention facilities.¹³

For these reasons, the ACLU respectfully appeals the denial of expedited processing.

We appreciate your prompt response. Please contact me at dgalindo@aclu.org with any questions.

Sincerely,

/s/ Dan Galindo

Dan Galindo
Staff Attorney
ACLU Immigrants' Rights Project

/s/ Eunice Cho

Eunice Cho
Sr. Staff Attorney
ACLU National Prison Project

¹² Joel Rose and Sergio Martinez-Beltran, *Trump Touts Historic Deportation Plans, But His Own Record Reveals Big Obstacles*, National Public Radio, Aug. 14, 2024, <https://www.npr.org/2024/08/14/nx-s1-5037992/trump-immigrants-border-mass-deportation-presidential-race-migrants>.

¹³ *Id.*